

**BILLING CODE: 4410-02**

**COMPACT COUNCIL**

**NATIONAL CRIME PREVENTION AND PRIVACY COMPACT**

**28 CFR Part 901**

**[NCPPC 100-F]**

**RIN**

**Fingerprint Submission Requirements**

**AGENCY:** National Crime Prevention and Privacy Compact Council.

**ACTION:** Final rule.

**SUMMARY:** The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing a rule interpreting the Compact's fingerprint-submission requirements as they relate to the use of the Interstate Identification Index (III) for noncriminal justice record checks during an emergency situation when the health and safety of a specified group may be endangered. Pursuant to the rule, the Compact Council has approved a proposal from a state requesting the delayed submission of fingerprints in connection with criminal history records searches conducted for the purpose of the emergency placement of children with temporary custodians. The Council's approval of such a state request is being published in the Notice Section of today's Federal Register.

**NOTICE OF THE EFFECTIVE DATE:** These procedures are effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wilbur Rehmann, Compact Council Chairman, Montana Department of Justice, 303 North Roberts, 4th Floor, Post Office Box 201406, Helena, Montana 59620-1406, telephone number (406) 444-6194.

**SUPPLEMENTARY INFORMATION:**

The National Crime Prevention and Privacy Compact, 42 U.S.C. §§14611-16, establishes uniform standards and processes for the interstate and federal-state exchange of criminal history records for noncriminal justice purposes. The Compact was signed into law on October 9, 1998, (Pub. L. 105-251) and became effective on April 28, 1999 when ratified by the second state.

**Background**

The Compact requires that subject's fingerprints or other approved forms of positive identification "shall be submitted with all requests for criminal history record checks for noncriminal justice purposes." See 42 U.S.C. §14616, Article V (a). The Compact Council recognizes the extreme reliability of fingerprint-based identifications and believes that the above quoted provision requires that, whenever feasible, fingerprints should be submitted contemporaneously with search requests. However, the Council acknowledges that there are exigent circumstances in which time is a critical factor in decision making and in which the immediate fingerprinting of the subject is not feasible. In such emergency circumstances, the Council believes that the Compact permits preliminary name searches of the III System to be conducted for noncriminal justice purposes,

provided that subject's fingerprints are obtained and submitted at the earliest time feasible. This procedure allows access to criminal history record information in a timely manner in exigent circumstances with follow-up positive identification assured by fingerprint submissions.

The rule published herein authorizes state criminal history record repositories and the FBI, upon approval by the Compact Council, to grant access to the III System in emergency situations on a delayed fingerprint submission basis, predicated upon a statute approved by the U.S. Attorney General pursuant to Pub. L. 92-544 and Article III (c) of the Compact. Access authorized by the rule shall adhere to both the Criminal Justice Information Services Security Policy and applicable state security policies. A noncriminal justice agency granted access to the III must adhere to applicable federal and state audit protocols. Violation and/or misuse of the authorized access granted may result in sanctions from the Compact Council, which may include the discontinuance of services.

Proposals to the Compact Council for granting of delayed fingerprint submission under the rule should be sent to the Compact Council Chairman at the address set out above. Such proposals should include information sufficient to fully describe the emergency nature of the situation in which delayed submission authority is being sought, the risk to the health or safety of the individuals involved, and the reasons why the submission of fingerprints contemporaneously with the search request is not feasible.

The rule (Sec. 901.3) provides that once a proposal from any state has been approved by the Compact Council, other states may apply for delayed submission authority consistent with that approved proposal through application to the FBI's Compact Officer. For example, applications for such authority dealing with the emergency placement of children, a proposal for which has been approved by the Council in a notice published separately in today's Federal Register, may be filed with the FBI's Compact Officer rather than with the Council Chairman.

#### **Administrative Procedures and Executive Orders**

##### *Administrative Procedures Act*

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate/federal compact which was approved and enacted into law by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives), and is authorized by the Compact to promulgate rules and procedures for the effective and proper use of the Interstate Identification Index (III) System for noncriminal justice purposes. The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council shall be published in the Federal Register. See 42 U.S.C. §14616, Articles II(4) and VI(a)(1),(e). This publication complies with those requirements.

*Executive Order 12866*

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. §3502; accordingly, Executive Order 12866 is not applicable.

*Executive Order 13132*

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. §3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this Rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

*Executive Order 12988*

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. §105; accordingly, Executive Order 12988 is not applicable.

### *Unfunded Mandates Reform Act*

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### *Small Business Regulatory Enforcement Fairness Act of 1996*

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. §§801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. §804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. §804.

### **List of Subjects in 28 CFR Part 901**

Health, Safety, Crime, Privacy

Accordingly, for the reasons set forth above, and by the authority vested in the National Crime Prevention and Privacy Compact Title 28 of the Code of Federal Regulations is amended by establishing a new chapter IX consisting of Part 901 read as follows:

### **CHAPTER IX—NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL**

#### **PART 901 Fingerprint Submission Requirements**

#### **Part 901—FINGERPRINT SUBMISSION REQUIREMENTS**

Sec.

901.1 Purpose and authority.

901.2 Interpretation of fingerprint submission requirements.

901.3 Approval of delayed submission requests.

**Part 901---FINGERPRINT SUBMISSION REQUIREMENTS**

**§901.1 Purpose and authority.**

The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616. The purpose of these provisions is to interpret the Compact, as it applies to the required submission of fingerprints, along with requests for Interstate Identification Index (III) records, by agencies authorized to access and receive criminal history records under Pub. L. 92-544, and to establish protocols and procedures applicable to the III and its use for noncriminal justice purposes.

**§ 901.2 Interpretation of fingerprint submission requirements.**

(a) Article V of the Compact requires the submission of fingerprints or other approved forms of positive identification with requests for criminal history record checks for noncriminal justice purposes. The Compact Council finds that the requirement for the submission of fingerprints may be satisfied in two ways:

- (1) The fingerprints should be submitted contemporaneously with the request for criminal history information, or
- (2) For purposes approved by the Compact Council, a delayed submission of fingerprints may be permissible under exigent circumstances.

(b) The Compact Council further finds that a preliminary III name based check may be made pending the receipt of the

delayed submission of the fingerprints. The state repository may authorize terminal access to authorized agencies designated by the state, to enable them to conduct such checks. Such access must be made pursuant to the security policy set forth by the state's Control Terminal Agency.

### **§ 901.3 Approval of Delayed Fingerprint Submission Request**

A state may, based upon exigent circumstances, apply for delayed submission of fingerprints supporting requests for III records by agencies authorized to access and receive criminal history records under Pub. L. 92-544. Such applications must be sent to the Compact Council Chairman and include information sufficient to fully describe the emergency nature of the situation in which delayed submission authority is being sought, the risk to health and safety of the individuals involved, and the reasons why the submission of fingerprints contemporaneously with the search request is not feasible.

In evaluating requests for delayed submissions, the Compact Council must utilize the following criteria:

- 1) the risk to health and safety; and
- 2) the emergency nature of the request.

Upon approval of the application by the Compact Council, the authorized agency may conduct a III name check pending submission of the fingerprints. The fingerprints must be submitted within the time frame specified by the Compact Council.

Once a specific proposal has been approved by the Compact Council, another state may apply for delayed fingerprint

submission consistent with the approved proposal, provided that the state has a related Pub. L. 92-544 approved state statute, by submitting the application to the FBI's Compact Officer.

Dated: \_\_\_\_\_

Wilbur Rehmann

Compact Council Chairman